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Attorneys for Defendants Stratasoft, Inc. and INX, Inc.

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

SCHNEIDER RUCINSKI ENTERPRISES, a
 California Company,

Plaintiff,

vs.

TOUCH ASIA OUTSOURCING
 SOLUTIONS, INC. dba TOUCH ASIA
 CALL CENTER, INC., a California
 Corporation; RUDY NGAW, an individual;
 STRATASOFT, INC.; INX, INC., a Texas
 Corporation formerly known as I-SECTOR
 CORPORATION; and DOES 1 through 20,
 inclusive,

Defendants.

Case No. 3:08-cv-00138-WQH-POR

Date: July 28, 2008

Time: 11:00 a.m.

Judge: Hon. William Q. Hayes

**DEFENDANTS STRATASOFT, INC.
 AND INX, INC.'S OPPOSITION
 PLAINTIFF NOREEN RUCINSKI'S EX
 PARTE REQUEST TO CONTINUE THE
 HEARINGS ON DEFENDANTS'
 MOTION TO DISMISS FOR LACK OF
 JURISDICTION**

(No Oral Argument)

Complaint Filed: January 23, 2008

I. INTRODUCTION

Defendants Stratasoft, Inc. and INX, Inc. oppose Plaintiff Noreen Rucinski's ex parte request to continue the hearing on Defendants' motion to dismiss for lack of jurisdiction, or in the alternative, to dismiss for failure to state a claim, or in the alternative, for a more definite statement. Plaintiff's request should be denied because she has failed to comply with the requirements of Local Rule 7.1.g.2. Specifically, Plaintiff had plenty of time to seek a continuance of the due date of her opposition and of the hearing, but waited until after her time to file an opposition had expired before filing a belated request for a continuance. Plaintiff

1 also has misrepresented her communications with Defendants' counsel on the matter.
 2 Defendants have never told Plaintiff that they would be agreeable to a three-week continuance.
 3 Rather, Plaintiff asked Defendants' counsel for an extension of time to file an opposition and
 4 counsel informed Plaintiff that she would need to address the matter to the Court and get
 5 Defendant U.S. Colo's consent and, if she did, Defendants would not oppose a short
 6 continuance. Defendants expected Plaintiff to contact and obtain an agreement from
 7 Defendant U.S. Colo to the continuance. However, Plaintiff never contacted these Defendants
 8 again to indicate whether she had successfully obtained Defendant U.S. Colo's consent to a
 9 continuance. Thus, there never was any agreement by these Defendants to any continuance.

10 **II. PLAINTIFF'S REQUEST FOR A CONTINUANCE IS BELATED AND**
 11 **DEMONSTRATES A LACK OF DILIGENCE**

12 Defendants' motion to dismiss was filed June 19, 2008 and was set for hearing on July
 13 28, 2008. Thus, the hearing was more than a month from the date the motion was filed.
 14 Pursuant to Local Rule 7.1e.2, Plaintiff was required to file her opposition to the motion by
 15 July 14, 2008 (i.e. 14 calendar days prior to July 28). Thus, from June 19 until July 14,
 16 Plaintiff had almost an entire month to ponder her opposition and its due date.

17 On Thursday, July 10, 2008, four days before her opposition was due, Plaintiff
 18 contacted Defendants' counsel's assistant and asked if Defendants' counsel would re-send, via
 19 email, courtesy copies of the motion to dismiss.¹ Plaintiff stated that she was unable to open
 20 the PDF documents. Defendants thereupon emailed Plaintiff another set of the motion papers.
 21 The next day, Friday, July 11, Plaintiff sent Defendants' counsel another email claiming that
 22 she had sent Defendants' counsel a letter, two weeks prior, asking about an extension for her
 23 response, but had not heard back from Defendants. This allegation was questionable, because
 24 Defendants' counsel had never received such a letter from Plaintiff, and Plaintiff generally
 25 communicates with Defendants' counsel via email, and not by US mail.

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 28 ¹ Defendants had sent an earlier courtesy copy of the motion to Plaintiff by e-mail on June 19, 2008.

1 In her July 11 email, Plaintiff also stated that she had not received Defendant's U.S.
 2 Colo's "responses until a request by email was done." Plaintiff stated that "this has put us
 3 behind to complete the response, as well as being on vacation in time allocated [by the court
 4 rules to file the response]." On July 11, 2008, via email, Plaintiff for the first time mentioned a
 5 need for an extension to Defendants and asked if Defendants' counsel would agree to an
 6 extension.

7 Defendants' counsel responded to Plaintiff's July 11 email the same day. Counsel
 8 informed Plaintiff that she needed to make the request for a continuance to the court.
 9 Defendants also informed Plaintiff that Defendants would not oppose the motion if Plaintiff
 10 also contacted Defendant U.S. Colo's counsel and obtained U.S. Colo's agreement for a
 11 continuance. However, Defendants never heard back from Plaintiff on the matter. She never
 12 indicated whether Defendant U.S. Colo ever agreed to a continuance.

13 On July 14, the date Plaintiff's opposition was due, Plaintiff filed no opposition. Two
 14 days later, on Wednesday, July 16, Plaintiff contacted Defendants' counsel's assistant to
 15 complain that she still could not open the PDF copies of the motion which Defendants had sent
 16 her.² Plaintiff made no mention to Defendants of whether she had contacted the court or
 17 Defendant U.S. Colo regarding the continuance. However, Plaintiff apparently filed her
 18 request for a continuance that same day (July 16), two days after her opposition was due.

19 Plaintiff's request for a continuance does not comply with the letter or spirit of this
 20 Court's local rules. Local Rule 7.g.2 states that "[a]ny request for continuance of a noticed
 21 motion shall be made as soon as possible to the judge to whom the matter is assigned. Prior to
 22 seeking such continuance, the party seeking the continuance shall contact all opposing parties
 23 or their counsel to determine whether they would agree to such continuance." First, the Rule
 24 requires diligence. Plaintiff has presumably known of the due date of her opposition since
 25 _____

26 ² It should be noted that although Defendants sent Plaintiff the PDF documents via email on June 19,
 27 these documents were sent purely as a courtesy, since the motion papers were mail served on Plaintiff
 28 on June 19, 2008. Thus, Plaintiff should have received a full version of the motion papers via mail
 shortly after June 19.

1 June 19, yet she did not request a continuance until two days *after* the due date of the
2 opposition. Indeed, even though Plaintiff apparently sat on the motion for more than three
3 weeks before contacting Defendants' counsel on July 11, she still did not request the court for
4 a continuance then. Plaintiff waited until after her opposition was due. Plaintiff's conduct
5 reflects a lack of diligence that cannot simply be excused on the grounds that Plaintiff is in pro
6 per. Plaintiff was aware of the need to make a prompt request to the court for the continuance
7 at least as of July 11 if not earlier.

8 Second, Plaintiff also showed a similar lack of exigency by not contacting Defendant
9 U.S. Colo directly by telephone when she realized she needed a continuance and instead chose
10 to communicate by mail. Since counsel for Defendants Stratasoft and INX informed Plaintiff
11 that they would not oppose a continuance only if she obtained the consent of counsel for U.S.
12 Colo, Plaintiff should have diligently contacted U.S. Colo's counsel about the matter and then
13 gotten back to Defendants. Instead, Plaintiff allegedly mailed a request to counsel for
14 Defendant U.S. Colo, and apparently never got a response. Thus, Plaintiff misrepresents that
15 Defendants' counsel agreed to an extension of up to three weeks. The matter was never
16 discussed. Plaintiff never got back to Defendants' counsels to inform them of Defendant U.S.
17 Colo's position in the matter. Thus, there certainly was no agreement between Defendants and
18 Plaintiff about the length of any continuance, because none had been agreed upon.

19 **III. CONCLUSION**

20 Because Plaintiff has not been diligent in her request for a continuance and failed to
21 confer with all of the parties in that respect, Defendants Stratasoft and INX oppose the
22 continuance. Defendants want the court to promptly determine the issue of whether subject
23 matter jurisdiction exists in this case because Defendants believe their position has merit and
24 that Plaintiff has no meritorious opposition to offer. Therefore, any continuance simply
25 protracts the day of reckoning at Defendants' expense.

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1 Dated: July 18, 2008

Respectfully submitted

2 WALLER LANSDEN DORTCH & DAVIS, LLP

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4 By: s/John E. McOsker

5 John E. McOsker
6 Attorneys for Defendants
7 Stratasoft, Inc. and INX, Inc.
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